

MOTOR FUELS UNDERGROUND
STORAGE TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA



FINANCIAL STATEMENT AUDIT
ISSUED MARCH 30, 2005

**LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
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With *Government Auditing Standards* A

MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND



STEVE J. THERIOT, CPA
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February 24, 2005

Independent Auditor's Report
on the Financial Statement

**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA**
Baton Rouge, Louisiana

We have audited the accompanying statement of cash basis assets and fund balances and cash receipts, disbursements, and changes in cash basis fund balances of the Motor Fuels Underground Storage Tank Trust Fund, a special revenue fund within the Department of Environmental Quality, as of and for the year ended June 30, 2004, as listed in the table of contents. This financial statement is the responsibility of management of the Department of Environmental Quality. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall basic financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1, the accompanying financial statement presents only the Motor Fuels Underground Storage Tank Trust Fund and does not purport to, and does not, present fairly the financial position of the Department of Environmental Quality, as of June 30, 2004, and the changes in its financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America. Furthermore, the accompanying statement has been prepared on the cash basis, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND

In our opinion, the financial statement referred to previously presents fairly, in all material respects, the cash basis financial position of the special revenue fund as of June 30, 2004, and the changes in cash basis financial position thereof for the year then ended in conformity with the basis of accounting described in note 1.

In accordance with *Government Auditing Standards*, we have also issued a report dated February 24, 2005, on our consideration of the Motor Fuels Underground Storage Tank Trust Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, and contracts and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Respectfully submitted,



Steve J. Theriot, CPA
Legislative Auditor

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**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA**

**Statement of Cash Basis Assets and Fund Balances and
Cash Receipts, Disbursements, and Changes in Cash
Basis Fund Balance - Special Revenue Fund
As of and for the Year Ended June 30, 2004**

RECEIPTS

Bulk distribution fees	\$21,637,764
Annual assessment fees	49,212
Interest earnings	205,058
Other receipts	38,736
Total receipts	<u>21,930,770</u>

DISBURSEMENTS - claims for reimbursement	<u>20,851,972</u>
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EXCESS (Deficiency) OF RECEIPTS OVER DISBURSEMENTS	1,078,798
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OTHER FINANCING SOURCES (USES) -

Transfer to Environmental Trust Fund (note 4)	(632,384)
Transfer to Hazardous Waste Site Cleanup Fund (note 5)	<u>(28,835)</u>

EXCESS (Deficiency) OF RECEIPTS AND OTHER FINANCING SOURCES OVER DISBURSEMENTS AND OTHER FINANCING USES	417,579
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CASH BASIS FUND BALANCE - Beginning of Year	<u>17,450,257</u>
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CASH BASIS FUND BALANCE - End of Year	<u><u>\$17,867,836</u></u>
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CASH BASIS ASSETS - End of Year

Cash (note 2)	<u><u>\$17,867,836</u></u>
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CASH BASIS FUND BALANCE - End of Year

Unreserved/undesignated	<u><u>\$17,867,836</u></u>
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The accompanying notes are an integral part of this statement.

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INTRODUCTION

The Motor Fuels Underground Storage Tank Trust Fund was established by Louisiana Revised Statutes (R.S.) 30:2194 - 2195.10 in response to the 1984 Subtitle I amendments to the Resource Conservation and Recovery Act, which provided for the development and implementation of a comprehensive regulatory program for underground storage tanks containing motor fuels. The motor fuel underground storage tank reimbursement program is a section within the Louisiana Department of Environmental Quality (DEQ). All disbursements are handled by the department although advice is provided by the Underground Motor Fuels Storage Tank Advisory Board that is composed of six members as follows: the secretary of the Department of Environmental Quality or his designee, two members appointed by the secretary of the Department of Environmental Quality to represent the Response Action Contractor Community, two members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association, and one member appointed by the Mid-Continent Oil and Gas Association. The board members serve without per diem. The monies in the Motor Fuels Underground Storage Tank Trust Fund are used to reimburse all necessary and appropriate expenditures for investigation, assessment, and remediation of sites contaminated by a motor fuels release from an underground storage tank. Remediation consists of cleanup of soil, groundwater, and inland surface waters, using cost effective methods that are technologically feasible and reliable, while insuring adequate protection of the public health, safety, and welfare and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the department. Approximately 13,000 tanks registered by the permit division participate in the underground storage reimbursement program. The Motor Fuel Trust section administering the program is staffed by 13 employees.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. BASIS OF PRESENTATION

The accompanying financial statement has been prepared on a cash basis of accounting, with collections recognized when received and disbursements reflected when paid. As such, the accompanying financial statement does not reflect the receivables and related payables associated with the activities of the fund.

B. REPORTING ENTITY

R.S. 30:2195.5 requires the Motor Fuels Underground Storage Tank Trust Fund, a special revenue fund administered by DEQ, to be audited annually. Accordingly, the accompanying financial statement reflects only the financial activity of the special revenue fund. Amounts included in these financial statements are also included in the annual fiscal report for DEQ, Office of Management and Finance. Amounts included in the annual fiscal report of DEQ, Office of Management and Finance, are also included in the Comprehensive Annual Financial Report for the State of Louisiana, which is audited annually by the Legislative Auditor.

MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND

C. RECEIPTS AND DISBURSEMENTS

Receipts

Bulk distribution fees, annual assessment fees, interest earnings, and other receipts are recorded when the receipts are deposited in the depository bank and classified by the State Treasurer's Office.

Disbursements

Disbursements are made for (1) reimbursements for rehabilitation and remediation of sites contaminated by a release from a motor fuel underground storage tank when the owner is an eligible participant, and (2) payments to the third party who brings a claim against an owner because of damages sustained by a release into the groundwater or subsurface soils and who has obtained a final judgment in said action against an owner who is in substantial compliance with the laws, rules, and regulations at the time the release occurred. R.S. 30:2195.4 provides the procedures for disbursements from the trust fund.

2. CASH

At June 30, 2004, cash is composed of deposits with the state treasury totaling \$17,867,836. Cash balances held and controlled by the state treasurer are secured from risk by the state treasurer through separate custodial agreements, and the risk disclosures required by accounting principles generally accepted in the United States of America are included within the state's basic financial statements.

3. BULK DISTRIBUTION AND ANNUAL ASSESSMENT FEES

Act 1014 of 1990 amended R.S. 30:2195.3, effective September 1, 1990, and required the collection of a bulk distribution fee by the bulk fuel dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$13.50 per 9,000 gallons. Act 176 of 1993, effective August 15, 1993, amended R.S. 30:2195.3 to increase the bulk distribution fee by the bulk fuel dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$27.00 per 9,000 gallons. Act 336 of 1995, effective June 15, 1995, amended R.S. 30:2195.3 to increase the bulk distribution fee by the bulk fuel dealer based on a charge for each separate withdrawal of motor fuel at a rate of \$72.00 per 9,000 gallons. Fees not received in a timely manner are subject to a late penalty of an additional 5% per month of the calculated fee that is not remitted. In addition, a fee not to exceed \$275.00 per year per eligible underground motor fuel storage tank storing new or used motor oil is assessed to all owners of such tanks in accordance with R.S. 30:2195.3(B). New or used motor oil fees not received within 15 days of the due date will be charged a late payment fee. Any late payment fee is calculated from the due date on the invoice. Payments not received by the department by the fifteenth day from the due date will be assessed a 5% late payment fee on the original assessed fee. Payments not received by the department by

the thirtieth day from the due date will be assessed an additional 5% late payment fee on the original assessed fee. Payments not received by the department by the sixtieth day from the due date will be assessed an additional 5% late payment fee on the original assessed fee. Failure to pay the prescribed application fee or annual fee within 90 days after the due date shall constitute a violation and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

On an annual basis, all owners of registered tanks are assessed a tank registration fee of \$54 for each tank. The revenue collected from the tank registration fee is deposited to the Environmental Trust Fund as provided by R.S. 30:2195(B).

Collection of the motor fuel delivery fee and new or used motor oil fees cease when the unobligated balance in the trust fund equals or exceeds \$20,000,000. The fees are reinstated when the unobligated balance in the trust fund has fallen below \$10,000,000 as provided by R.S. 30:2195.3(A)(10).

**4. TRANSFER FROM MOTOR FUELS
UNDERGROUND STORAGE TANK TRUST
FUND TO ENVIRONMENTAL TRUST FUND**

The Motor Fuels Underground Storage Tank Trust Fund transferred \$632,384 during the 2003-2004 fiscal year to the Environmental Trust Fund. R.S. 30:2195.4 (C)(2) states that if the secretary determines that funds deposited into the Environmental Trust Fund pursuant to R.S. 30:2195(B) are insufficient relative to the legislatively approved fiscal appropriation for the Underground Storage Tank activities during a given year, the secretary may order the treasurer to transfer from the Tank Trust Fund to the Environmental Trust Fund only that amount necessary to reach the authorized ceiling. The transfer of \$632,384 is reported on Statement A.

**5. TRANSFER FROM MOTOR FUELS
UNDERGROUND STORAGE TANK TRUST
FUND TO HAZARDOUS WASTE SITE CLEANUP FUND**

The Motor Fuels Underground Storage Tank Trust Fund transferred \$28,835 in July 2003, to the Hazardous Waste Site Cleanup Fund. R.S. 30:2033(A) of the Louisiana Environmental Quality Act states that upon receipt of evidence that there is an incident occurring which is of such magnitude as to require immediate action to prevent irreparable damage to the environment or a serious threat to life or safety based on recognized criteria or standards or both, the secretary may declare that an emergency exists. When an emergency exists, monies from the Hazardous Waste Site Cleanup Fund are used to defray the cost of investigation, testing, containment, control, and cleanup of a hazardous waste site pursuant to R.S. 30:2205(D). On June 25, 2002, a declaration of emergency was declared for a facility known as Burt's Chevron in Ruston, Louisiana. This site under normal circumstances would qualify for the abandoned tank program under the Motor Fuel Underground Storage Tank Trust Fund. The department transferred \$28,835 from the trust fund to the Hazardous Waste Site Cleanup Fund for reimbursement of expenses for the remediation of the site. This transfer is reported on Statement A.

MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND

6. LITIGATION AND CLAIMS

At June 30, 2004, nine lawsuits are pending against the Motor Fuels Underground Storage Tank Trust Fund. The attorney for DEQ has advised that it appears probable that the trust fund will be liable for these nine lawsuits. The outcome of these suits is not expected to exceed \$1,200,000 in total. Subsequent to June 30, 2004, two lawsuits were settled. The estimated liability on the cases was \$200,000, which is included in the above total. Actual settlement on the two lawsuits totaled \$68,000. These amounts are not accrued in the financial statement, which is prepared on the cash basis of accounting.

7. RELATED PARTY TRANSACTIONS

Two members of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board have ownership interests in companies that received disbursements from the Motor Fuels Underground Storage Tank Trust Fund during the 2004 fiscal year. John Koury, Jr., has a 23.5% ownership interest in KourCo Environmental Services, Inc., which received \$1,154,308 in payments from the fund. Ted E. Dove has less than a 1% ownership interest and is an officer with Conestoga-Rovers & Associates, Inc., which received \$2,299,319 in payments from the fund.

8. SUBSEQUENT EVENTS

On July 6, 2004, Act 692 of 2004 became effective and amended R.S. 30:2194-R.S. 2195.11 as follows:

1. 2195.3(7) Late penalty charges shall not exceed fifteen percent of the fee that is not remitted for a particular month. Failure to pay the fee in accordance with this provision within ninety days after the due date shall constitute a violation and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act, including but not limited to revocation or suspension of the applicable permit, license, registration, or variance.
2. 2195.10 Financial responsibility for noncompliance: Releases occurring after August 1, 2001, shall be subject to additional financial responsibility for noncompliance when that noncompliance causes the release or contributed to the magnitude of the release. For a second or subsequent release caused by noncompliance, or the noncompliance contributed to the magnitude of the release, the additional financial responsibility will double. For three or more noncompliance issues that causes a release or contributes to the magnitude of a release, the release will be ineligible for participation in the Tank Trust Fund program.

This Act also changed the composition of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board (R.S. 30:2195.8) from six to eight members. The members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association changed from

two to four members. In addition, no board member shall be appointed for more than two consecutive terms. These changes were effective on January 1, 2005. The terms of all appointed members serving expired on that date and the new Advisory Board members were appointed in accordance with the new provisions. All terms commencing on that date are to be considered the initial term of each member.

MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND

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OTHER REPORT REQUIRED BY
GOVERNMENT AUDITING STANDARDS

The following pages contain a report on internal control over financial reporting and on compliance and other matters as required by *Government Auditing Standards*, issued by the Comptroller General of the United States. This report is based solely on the audit of the financial statement and includes, where appropriate, any reportable conditions and/or material weaknesses in internal control or compliance and other matters that would be material to the presented financial statement.

MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND



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February 24, 2005

Report on Internal Control Over Financial Reporting and on Compliance
and Other Matters Based on an Audit of the Financial Statement
Performed in Accordance With *Government Auditing Standards*

**MOTOR FUELS UNDERGROUND STORAGE
TANK TRUST FUND
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF LOUISIANA
Baton Rouge, Louisiana**

We have audited the financial statement of the Motor Fuels Underground Storage Tank Trust Fund, a special revenue fund within the Department of Environmental Quality, as of and for the year ended June 30, 2004, and have issued our report thereon dated February 24, 2005. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Motor Fuels Underground Storage Tank Trust Fund's internal control over financial reporting to determine our auditing procedures for the purpose of expressing our opinion on the financial statement and not to provide an opinion on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statement being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Motor Fuels Underground Storage Tank Trust Fund's financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with

MOTOR FUELS UNDERGROUND STORAGE TANK TRUST FUND

which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of the Motor Fuels Underground Storage Tank Trust Fund, Department of Environmental Quality and its management and is not intended to be, and should not be, used by anyone other than these specified parties. Under Louisiana Revised Statute 24:513, this report is distributed by the Legislative Auditor as a public document.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve J. Theriot", is written over a horizontal line.

Steve J. Theriot, CPA
Legislative Auditor

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